

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HENRY A. MORAN	:	DETERMINATION
	:	DTA NO. 818742
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period Ending March 5, 2000.	:	

Petitioner, Henry A. Moran, 305 Maple Road, Syracuse, New York 13219, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period ending March 5, 2000.

A small claims hearing was held before Arthur Johnson, Presiding Officer, at the offices of the Division of Tax Appeals, 333 East Washington Street, Syracuse, New York, on June 19, 2002 at 10:30 A.M.. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Joseph Ayoub).

ISSUE

Whether petitioner is entitled to a refund for a portion of the use tax paid on items purchased out of the country and brought into New York State.

FINDINGS OF FACT

1. On September 15, 2000, the Division of Taxation ("Division") sent petitioner, Henry A. Moran, a letter indicating that a review of United States Customs Declarations showed that he purchased property outside of the United States and brought it into New York State. The letter further advised petitioner that the property was valued at \$3,900.00 and he should remit payment

for the use taxes due of \$273.00 plus interest of \$13.97. On October 4, 2000, petitioner paid the sum of \$286.97.

2. On December 11, 2000, petitioner filed an application for a refund of \$188.97 which represented \$175.00 in tax on purchases of \$2,500.00 and the amount of interest paid of \$13.97. The basis for the refund of tax was that purchases of \$2,500.00 were gifts for relatives in New Jersey and Massachusetts. Petitioner claimed a refund for the interest because he immediately paid the tax upon first notification by the Division.

3. On March 23, 2001, the Division denied the refund claim in full. The denial letter stated the following reason:

The New York State Tax Law imposes a use tax on New York State residents purchases made outside of the State which would be subject to sales tax if their purchases were made in New York. New York State Sales and Use Tax Law section 1101(b)(7), in part, defines “use” as “the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time. . . .

In order for the merchandise to be exempt from sales tax, the merchandise must be shipped directly to the final destination point from the place where the merchandise was purchased. With regards to the interest amount charged, interest cannot be waived under the tax statute.

4. Petitioner and his wife drove from Syracuse to his brother’s home in Philadelphia. They left their vehicle there and traveled with his brother and his brother’s wife to John F. Kennedy Airport (“JFK”) in New York where they boarded a plane to Egypt. Petitioner bought several items in Egypt as gifts for relatives. The purchases totaled \$3,900.00. Petitioner returned to JFK and went immediately back to his brother’s house to pick up his own car. Petitioner and his wife delivered gifts to relatives in New Jersey and then Massachusetts before returning to Syracuse. The value of the gifts to relatives was \$2,500.00.

SUMMARY OF THE PARTIES' POSITIONS

5. Petitioner argued that he should not be liable for the use tax on the gifts delivered to his relatives outside of New York State. Although petitioner agreed that tax was due on the items brought to Syracuse, he believes that interest should not be applicable since he paid the tax as soon as he was notified by the Division.

6. The Division maintained that petitioner had possession and control of the merchandise when he arrived in New York State and since he was a resident of New York, he is liable for the use tax imposed under Tax Law § 1110(a) regardless of the fact that he delivered the items outside the State.

CONCLUSIONS OF LAW

A. When tangible personal property is purchased outside of the State by a resident of the State, for use outside the State, and is subsequently used in the State, the compensating use tax is due on the purchase price (Tax Law § 1110[a]; 20 NYCRR 531.4[a]).

The word “use” means and includes the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to the receiving, storage or any keeping or retention *for any length of time*, withdrawal from storage, any installation, any affixation to real property, or any consumption of such property (Tax Law § 1101[b][7]; 20 NYCRR 526.9[a]; emphasis added)

B. Petitioner was a New York State resident and brought tangible personal property into the State under his possession and control. Although the property was in New York for only a short time, a taxable event occurred (*Matter of Airlift Intl., Inc. v. State Tax Commn.*, 52 AD2d 688, 382 NYS2d 572). Accordingly, petitioner is liable for the use tax imposed under Tax Law § 1110(a) on purchases of \$3,900.00 and he is not entitled to any refund of the tax paid.

Petitioner was required to report and pay the use tax due on the purchases he made outside New York State within 20 days from the date the property was first brought into New York (20 NYCRR 531.6(b)(2)). Interest is computed from the date the tax was payable, not from when the Division gives notification of taxes due. Therefore, petitioner is not entitled to a refund of any portion of the interest paid.

C. The petition of Henry A. Moran is denied and the refund denial issued March 23, 2001 is sustained.

DATED: Troy, New York
August 29, 2002

/s/ Arthur Johnson
PRESIDING OFFICER